



Informal Hearing Determination

Company: A & G Coal Corporation **Permit No.:** 1101918
Subject: Notice of Violation LHT0002191 **Violation No.:** 1 Violation (RV)
Conference: July 26, 2012 @ 9:30 AM **Location:** Company Office
Participants: Jon Lawson-Biologist, Mark Wooten-Chief Engineer, Les Vincent-Field Engineer

Summary of Informal Hearing

Mr. Lawson stated that Mr. Joe Buchanan was responsible for ensuring that seeding was performed on A & G operations. He stated that Inspector Tankersley had contacted Mr. Buchanan concerning seeding on this permit in April of 2012. Mr. Lawson stated that approximately 125 acres were seeded in April of 2012. He stated that the flat areas referred to in the Notice of Violation (approximately 50 acres) were not seeded because those flat areas had not been prepared for seeding. Mr. Vincent stated that the approved plans called for the areas to be graded and prepared in accordance to the Forestry Reclamation Approach (FRA) requirements. Mr. Lawson stated that the slopes were seeded in April prior to the N.O.V. issuance. He stated that areas where equipment had been parked (flat areas) were too compacted to seed. Mr. Lawson also stated that all other areas on this permit are in an active status.

Mr. Wooten stated that Inspector Tankersley was correct in that no additional material had been deposited in Backfill Storage Area B since December of 2011. He stated that, as was pointed out in Inspector Tankersley's report, the approved permit states that "Disturbed areas will be seeded within 30 days after final grading during normal planting periods." Mr. Wooten stated that the area covered by the N.O.V. did not have final grading.

Mr. Lawson stated that the area had not been prepared for seeding in May and it was too dry in June to be seeded. He stated that the company plans to do final grading and to seed the area with a permanent seed mixture in August of 2012.

It was noted that information would be needed from Mr. Buchanan and Inspector Tankersley to complete the hearing record. Therefore, the hearing was left open pending their comments.

On July 27, 2012, Inspector Tankersley was contacted to get any comments that he might have concerning why he believed that the flat areas were in violation of seeding requirements. He stated that he would agree that approximately half of the flat areas were not prepared for seeding,

but he believed the other areas were loosely graded. He stated that the pictures on page 4 of 8 and on page 7 of 8 of the N.O.V. showed the loosely graded areas.

On July 30, 2012, Mr. Joe Buchanan of A & G Coal Corporation was contacted to obtain any comments he might have as to why he did not seed the flat areas prior to issuance of the N.O.V. He stated that the flat areas were not ready because those areas were very compacted and required ripping. He also stated that the weather was too hot in May and June. He said that Inspector Tankersley's report dated May 15 and 16, 2012 verified that the area needed final preparation. He stated that in that report, it stated that the operator needed to establish a suitable planting medium, such as ripping compacted soils and applying fertilizer and/or lime that was conducive to establishing a temporary or permanent vegetative cover for Backfill Storage Area B. Mr. Buchanan stated there had been no communication with the inspector that the flat areas were in violation. He stated that he planned to prepare and plant these areas in the fall.

Informal Hearing Recommendation

This hearing was closed on July 30, 2012 after taking comments from Mr. Buchanan as noted during the initial hearing on July 26, 2012. The approved permit requirements, the associated inspection reports and the applicable Virginia Coal Surface Mining Reclamation Regulations (VCSMRR) were reviewed in order to make a decision as to whether a seeding violation existed as listed on Notice of Violation LHT0002191.

Section 4 VAC 25-130-816.113 of VCSMRR requires that disturbed areas are planted the first normal time period during favorable planting conditions after replacement of the growth medium. The approved **REVEGETATION PLAN** contained in Section 9.4 of the permit plans require that on flatter portions of the permit, a timber enhancement revegetation plan will be achieved based on the FRA recommendations outlined by Burger, et al. Revegetation of disturbed areas will be seeded within 30 days after final grading during normal planting periods.

Both the regulations and the approved plans require that final grading, including the replacement of the growth medium be completed prior to seeding operations. Furthermore, the FRA requires that all spoil areas be loosely graded in order to be successful in re-establishing timber stands. In order to determine if a seeding violation existed, one must evaluate the description of the N.O.V. and compare it to what the regulations and permit plans require. The operator is being issued a violation for failure to seed the graded flat areas within the approved planting timeframe (the first normal period of favorable planting conditions) and as per the approved permit. However; it is

obvious that the flat areas had not been properly prepared for seeding. The pictures show heavily traveled areas and compacted soil. Until the areas can be properly loosened up by ripping, it is my opinion that the areas cited in the N.O.V. had not been properly prepared for planting. In fact, the N.O.V. requires the operator to properly prepare the areas included in the N.O.V. by "establishing a suitable planting medium, such as ripping compacted soils, applying fertilizer and/or lime, conducive to establishing a temporary or permanent vegetative cover for Backfill

Storage Area B.” The operator is obligated to establish a temporary or permanent vegetative cover, depending on the time of year, only after the area has been properly completed according to approved permit plans. Therefore, it is my recommendation that Notice of Violation # LHT0002191 was improperly issued and should be vacated.

NOTE: The permittee should be aware that this decision does not relieve him from achieving final grading configurations on all disturbed areas in a timely manner in accordance with the approved permit plans and as required in the backfilling and grading regulations contained in VCSMRR. However, those regulation requirements are outside the scope of this informal hearing.

Informal Hearings Officer: _____

Date: 8/9/2012

